

1 **I. Background: Commission Decision No. 78317 and Court of Appeals Decision.**

2 After weeks of hearing, extensive briefing, and multiple days of Open Meetings, this
3 Commission issued Decision No. 78317 on November 9, 2021 finding that APS had imprudently
4 spent hundreds of millions of dollars on SCR pollution control technology at the Four Corners
5 plant. Among other findings, the Commission held that APS had failed to monitor the economics
6 of its SCR project, that it either knew or reasonably should have known that the economics had
7 changed, and that it either knew or reasonably should have known that the SCRs were no longer
8 cost effective even before commencing construction.¹ As a result of APS's imprudent behavior,
9 the Commission disallowed \$215.5 million of the project's total costs.²

10 On March 7, 2023, the Court of Appeals issued an Opinion vacating the SCR
11 disallowance, finding that the record did not contain sufficient evidence pertaining to whether
12 APS could have canceled the SCR construction contract and what economic impacts would have
13 resulted from such a cancellation.³ Without this information, the court reasoned, the record did
14 not support a finding that APS violated a duty to alter the course of the SCR project if doing so
15 would make economic sense and be in the public interest.⁴ Critically, the Court of Appeals did
16 not direct the Commission to authorize full rate recovery of the SCRs. Instead, the court
17 "remand[ed the SCR disallowance portion of Decision No. 78317] to the Commission *for further*
18 *proceedings consistent with the Commission's regulations and this opinion.*"⁵ In other words, the
19 court made no determination on whether on the SCR expenditure was prudent and should be paid
20 for by ratepayers, but rather directed the Commission to conduct additional proceedings to

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22 ¹ Decision No. 78317 at 112:25-113:15.

23 ² *Id.* at 116:22-24.

24 ³ *Arizona Public Service Company v. Arizona Corporation Commission*, No. 1 CA-CC 21-0002 at ¶ 37 (March 7, 2023)

⁴ *Id.*

⁵ *Id.* (emphasis added).

1 further investigate the prudence of the project, specifically regarding APS's contract obligations.

2 **II. The Proposed Settlement Terms, Which Would Permit APS to Recover More for**
3 **the SCRs than the Originally Disallowed \$215.5 Million, Are Neither Just and**
4 **Reason nor in the Public Interest.**

5 Despite the Court of Appeals' directive to further consider whether the costs of the SCRs
6 should be recovered from ratepayers, under the Legal Division Staff and APS's proposed
7 settlement terms, the Company would recover not only the \$215.5 million in costs previously
8 disallowed by this Commission but also an *additional* \$59.6 million for claimed lost revenue
9 between December 2021 and June 20, 2023 pertaining to both the SCR disallowance and the
10 return on equity ("ROE") set in Decision No. 78317. This would be authorized without any
11 finding that the SCRs were, in fact, a prudent investment. The settlement additionally
12 contemplates that the Commission will request that the Arizona Supreme Court depublish the
13 Court of Appeals' Opinion. Yet, a depublishment is not guaranteed and the proposed settlement
14 states that if the depublishment request is denied, the terms of the settlement will "remain in full
15 force and effect."

16 In sum, under the proposed terms, APS would recover *more* than the originally
17 disallowed \$215.5 million for the SCRs, and the only identifiable benefit to either the
18 Commission or ratepayers is the possibility that the Court of Appeals' Opinion could be
19 depublished. These terms are neither in ratepayers' interest nor aligned with the Court of
20 Appeals' remand instructions.

21 **III. The Commission Should Follow the Court of Appeals' Directive and Hold a New**
22 **Hearing with Additional Evidence on the Prudence of the SCR Expenditure.**

23 Sierra Club opposes the terms of the proposed settlement agreement as they would
24 unjustly burden ratepayers with the costs of SCRs that have never been found to be a prudent

1 expenditure by either this Commission or any Arizona court. In fact, Sierra Club questions
2 whether the Commission may authorize full rate recovery for an expenditure, particularly one as
3 large as the SCRs, without first determining whether that expenditure was prudent. Pursuant to
4 the Court of Appeals' Opinion, that determination cannot be made without an inquiry into APS's
5 ability to cancel the SCRs construction contract. The proposed settlement agreement does not
6 contain any information pertaining to APS's contractual obligations or otherwise provide any
7 additional information that would allow this Commission to find that the SCR expenditure was
8 prudently made, particularly in light of the extensive evidence cited in Decision No. 78317
9 demonstrating that the SCRs were an imprudent expenditure.

10 Authorizing rate recovery for the SCRs through a settlement agreement in which vested
11 stakeholders had no part and under which no prudence determine can be made does not advance
12 the public interest and is not just and reasonable for ratepayers. Accordingly, Sierra Club
13 recommends that the Commission reject the proposed settlement terms and either reopen APS's
14 2019 rate case to receive additional evidence on the prudence of the SCR project.

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16 Dated this 20th day of June, 2023.

17 /s/ Rose Monahan
18 Rose Monahan

19 Original e-filed on this 20th day of June, 2023 with:

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22 Copies of the foregoing mail/emailed this 20th day of June, 2023 to:
23 All Parties of Record.

24 By: /s/ Maddie Lipscomb